IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17/04/2003

CORAM

THE HONOURABLE MR. JUSTICE M.KARPAGAVINAYAGAM
AND
THE HONOURABLE MR. JUSTICE AR.RAMALINGAM

CRL.APPEAL No.549 of 2000

1. Jayabal
2. Saravanan
3. Siva @ Sivakumar ... Appellants

-Vs-

State by:
Inspector of Police,
Virudhunagar Police Station. ... Respondent.

Criminal Appeal against the judgment dated 15.02.2000 made in S.C. No.48 of 1998 on the file of Principal Sessions Judge, Virudhunagar at Srivilliputhur.

!For appellants : Mr. N.Mohideen Basha

^For respondent : Mr. E.Raja,
Additional Public Prosecutor.

:J U D G M E N T

(Judgment of the Court was delivered by M.KARPAGAVINAYAGAM.J,)

Jayapal (A1) was convicted for the offences under Sections 302 and 307 r/w 34 I.P.C. and sentenced to undergo life imprisonment and five years R.I. respectively.

2. Saravanan (A2) and Siva @ Sivakumar (A3) were convicted for the offences under Sections 302 r/w 34 and 307 I.P.C. and each sentenced to undergo life imprisonment and five years R.I. respectively. Challenging the same, this appeal has been filed.

3. Originally, four accused were tried for these offences. At the commencement of trial, A.2 Selvam absconded. Therefore, the case has been split up in respect of these three accused and they were tried arraying them as A.1 to A.3.

4. The prosecution case, in brief, is as follows:-

(a) P.W.1 Jeevanandam is the elder brother and P.W.2 Panchavarnam is the mother of the deceased Manickam. A.1 Jayabal is the elder brother of Selvam, the absconding accused. A.2 Saravanan and A.3 Siva @ Sivakumar are friends of A1 Jayabal and Selvam. They were all residing in the same village by name Odaipatti at Virudhunagar.

(b) The husband of P.W.2 Panchavarnam was admitted at Virudhunagar Government Hospital to take treatment for his liver problem and he was in-patient since 16.04.1996. P.W.2 used to go to hospital daily in the morning and evening for giving food to her husband Sethurama Thevar.

(c) On 26.04.1996 at about 9.00 a.m., P.W.2 after serving food to her husband at hospital, was coming back to her home at Odaipatti Village. On the way, the absconding accused Selvam, A.3 Sivakumar and one Ramnath were sitting near P.W.3 Ramadoss Chettiar's shop. On noticing that P.W.2 was proceeding towards the road, they eve-teased her by singing a cinema song "Kuchu Kuchu Rakkamma". Objecting to their obscene gestures, P.W.2 scolded them and came home. When deceased and his brother P.W.1 came back after finishing their work in the evening, this incident was informed to them by P.W.2.

(d) On the same day at about 8.00 p.m., P.W.2 was proceeding to the hospital to give food to her husband followed by her sons P.W.1 and deceased Manickam. When P.W.2 was nearing Ramadoss Chettiar's shop, the accused persons viz., A.1 Jayabal, absconding accused Selvam, A.2 Saravanan and A.3 Sivakumar restrained and questioned her as to how she could abuse them in the morning. P.W.1 and the deceased Manickam advised their mother P.W.2 to proceed to the hospital without talking to the accused persons, who eve-teased her in the morning.

(e) On getting enraged by this, A.1 took a knife from his waist and stabbed the deceased on his chest. On being shocked, P.W.1 questioned the accused as to why the deceased was being stabbed. Selvam, the absconding accused stating that they would attack the deceased in that way only, inflicted injuries on the face and right thigh of the deceased. On seeing this, P.W.1 came near to the deceased. A.2 Saravanan armed with a knife stabbed on the right rib of P.W.1. A.3 sivakumar with an Aruval gave a cut on the forehead of P.w.1. Thereafter, all the accused ran away from the scene.

(f) P.W.4 Maheswari, a relative of the deceased, happened to come to the scene of occurrence and saw the victims P.W.1 and the deceased. Then, P.Ws.2 and 4 arranged a cycle rickshaw to take the deceased and P.w.1 to Virudhunagar Government Hospital.

(g) P.W.11 Dr. Mohanarajan, attached to the Government Hospital, Virudhunagar, admitted the deceased and declared him dead. Ex.P.13

is the accident register relating to the deceased. He sent Ex.P.10 intimation relating to the injuries caused on the deceased to the police. He also sent another intimation Ex.P.11 to the police with regard to P.W.1. P.W.11 after giving treatment to P.W.1, referred him to Government Rajaji Hospital, Madurai, as his condition was serious.

(h) Accordingly, P.W.1 was taken to the Government Rajaji Hospital, where he was admitted by P.W.12 Dr.Pondiaraj at about 10.50 p.m.

(i) In the meantime, on receipt of Ex.P.10 and Ex.P.11, P.W.9 Head Constable attached to Virudhunagar Rural Police Station, went to Virudhunagar Government Hospital and came to know that the deceased Manickam died and P.W.1 was taken to Government Rajaji Hospital, Madurai. Hence, P.W.9 went to the Government Rajaji Hospital and obtained a complaint Ex.P.1 from P.W.1. Then, he returned to the Police Station and registered a case under Sections 302 and 324 I.P.C. Ex.P.12 is the first information report.

(j) On 27.04.1996 at about 6.30 a.m., P.W.13 the Inspector of Police received information and went to the scene of occurrence. He prepared observation mahazar Ex.P.2 and drew rough sketch Ex.P.15. Then, he went to the Virudhunagar Government Hospital and conducted inquest over the body of the deceased. Ex.P.16 is the inquest report. Then, he sent the body for post mortem.

(k) On 27.04.1996, P.W.8 Dr. Jeyamani conducted post mortem on the body of the deceased and found as many as five injuries. Ex.P.9 is the post mortem certificate. He gave opinion that the deceased would appear to have died of shock and haemorrhage due to the injuries to the heart and lung.
(l) On 28.04.1996 at about 1.00 a.m., P.W.13 arrested accused Selvam and on his confession, he recovered M.O.1 Aruval and produced him before the Court. Then, he took steps to arrest the other accused persons. In the meantime, he made arrangement to send the material objects for chemical examination. Then, he handed over the case to P. W.14, another Inspector of Police for further investigation, since he was transferred. In the meantime, other accused surrendered before the Court. P.W.14 continued the investigation and ultimately, filed the charge sheet against the accused 1 to 4 for the offences punishable under Sections 302, 302 r/w 34 and 307 I.P.C.

5. After the charges were framed, accused Selvam, who was originally arrayed as A.2, was absconding. Therefore, the case was split up and trial was conducted in respect of the other accused and they were arrayed as A.1 to A.3.

6. During the course of trial, on the side of prosecution, P.Ws.1 to 14 were examined. Exs.P.1 to P.16 were filed and M.Os.1 to 4 were marked.

7. When the accused were questioned under Section 313 of Cr.P.C., they simply denied their complicity in the crime in question. On the side of the accused, Dr.Jebamani, who gave treatment to P.W.1, was examined as D.W.1 and Ex.D.1 was marked through him.

8. The trial Court, on appraisal of the evidence available on record, concluded that the prosecution has proved its case beyond reasonable doubt and convicted the accused thereunder. Hence, this appeal.

9. Mr. M.Mohideen Basha, learned counsel appearing for the appellants/accused, after taking us through the entire evidence, would contend the following:-

" The materials available on record would not be sufficient to hold the accused guilty of the offences with which they were charged. When the complaint Ex.P.1 was recorded by P.W.9 Head Constable from P.W.1 on 27.04.1996 at about 4.00 a.m., P.W.1 had undergone an operation and as such, the complaint Ex.P.1 could not have been obtained from P.W.1 by P.W.9 as is evident from the evidence of D.W.1 and Ex.D.1. The motive attributed by the prosecution is so flimsy and as such, there was no strong motive for murder. There are several contradictions in the evidence of P.Ws.1 and 2, the eye witnesses and various infirmities in the evidence adduced by other witnesses. Even assuming that the entire case of the prosecution is true, A.2 and A.3 could not be convicted for the offence under Section 302 r/w 34, as they did not participate in the attack made on the deceased, there was no common intention and as such, they are liable to be convicted only for their individual acts, by which they caused injuries on P.W.1 and therefore, the conviction imposed upon A.2 and A.3 for the offence under Section 302 r/w 34 is liable to be set aside."

In order to substantiate the above plea, he would cite the decisions rendered in Ramasamy Ayyangar v. State of T.N. (1976 SCC (Cri) 518), Jaspal Singh v. State of Haryana (1976 SCC (Cri) 615), Rajender Singh v. State of Bihar (2000 SCC (Cri) 796) and Chandrakant Murgyappa Umrani v. State of Maharashtra (A.I.R. 1999 SC 1557).

10. In reply to the above submissions, the learned Additional Public Prosecutor read out the relevant portions of the evidence and contended that the evidence let in by the prosecution would be sufficient to hold that the accused are guilty of the offences, with which they were charged. He would further submit that the prosecution evidence would clearly portray that the occurrence had taken place only in furtherance of the common intention.

11. He would cite the authorities in Suresh v. State of U.P. (2001 SCC (Cri) 601), Ramasamy Ayyangar v. State of T.N. (1976 SCC (Cri) 5 18) and Lallan Raj and others V. State of Bihar (2003 (1) Supreme 150) .

12. We have carefully considered the rival contentions urged by the learned counsel on either side and also analysed the materials available on record.

13. The motive attributed for the main occurrence is that on 26.04.1996, P.W.2 Panchavarnam, after serving food to her husband at hospital, came back home and she was eve teased by some of the accused and other persons and this was objected to by P.W.2. Furthermore, P.W.2 abused them questioning their act. Therefore, these people had a grudge against P.W.2. P.W.2

informed the deceased and P.W.1, her sons about the eve-teasing incident.

14. At about 8.00 p.m. on the same day, P.W.2 was proceeding to the hospital to serve food to her husband, followed by P.W.1 and deceased. At that time, accused 1 to 3 along with Selvam, the absconding accused, were sitting near P.W.3 Ramadoss Chettiar's shop. On noticing that P.W.2 was proceeding along the road, the accused persons stopped and questioned her as to how she could abuse them in the morning.

15. When P.W.2 was answering to the accused, P.W.1 and the deceased came near her and reprimanded her as to why she was talking with those people, who had eve teased her in the morning. At that time, the accused attacked both the deceased and PW1. With reference to the above incidents PW1 and PW2 would speak to the details.

16. It is the specific evidence of P.W.2 that on 26.04.1996 at about 9.00 a.m., she went to the hospital and came back and at that time, eve teasing incident took place. The fact that her husband was admitted in the hospital and had been taking treatment since 16.04.1996, has been spoken to by P.W.10 Doctor, attached to Virudhunagar Hospital. According to P.W.10, the husband of P.W.2 was hospitalised from 1 6.04.1996 to 05.05.1996. Therefore, it is clear that on the date of occurrence, i.e. on 26.04.1996, in order to serve food to her husband at the hospital, P.w.2 went to the hospital and was coming back home after serving food.

17. It was elicited from both P.Ws.1 and 2 in the crossexamination that P.W.2 informed about the eve teasing incident, and her scolding to both P.W.1 and the deceased. This is in evidence that the accused had a grudge against P.W.2 for the reason that they were abused by P.W.2 in the morning as is evident from the evidence of P.W.2. Therefore, the motive is clearly established.

18. In regard to the main occurrence, the prosecution has mainly relied upon the evidence of P.Ws.1 and 2. As narrated above, when P.W.1 and the deceased advised P.W.2 to go to hospital without talking to the accused persons, the accused got enraged and started to attack the deceased. A1 Jayabal with knife inflicted injury on the chest of the deceased. At that time, P.W.1 came near the deceased and intervened and questioned the accused as to why he should attack the deceased. Selvam, the absconding accused shouting that he would attack the deceased like that only, inflicted injuries with aruval on the face and thigh of the deceased. When P.W.1 shouted, A2 Saravanan and A3 Sivakumar with knife and Aruval respectively, attacked P.W.1 and caused injuries on his rib and forehead. Thus, both of them sustained severe injuries and as their cries, the public gathered. Then accused ran away from the scene of occurrence.

19. P.W.4 Maheswari, who happened to come to the scene at that time, took both the victims along with P.w.2 in a cycle rickshaw and admitted them in the Virudhunagar Government Hospital. P.W.11 Dr. Mohanarajan while admitting both of them, found the deceased dead. Therefore, he sent intimation Ex.P.10 about the death of the deceased to the Police. He

gave treatment to PW.1 for the injuries found on his body. He sent intimation Ex.P.11 to the police in respect of P.W.1. Thereafter, P.W.1 was referred to Government Rajaji Hospital at Madurai for further treatment. Then, P.W.1 was taken to the said Hospital.

20. In the meantime, P.W.9 Head Constable on receipt of intimations Exs.P.10 and P.11, went to Virudhunagar Government Hospital and thereafter, on coming to know that P.W.1 had been taken to Government Rajaji Hospital, Madurai, went to the Hospital and obtained complaint Ex.P.1 from

P.W.1 at about 4.00 a.m. These factors have been clearly revealed through the evidence of P.Ws.1 , 2, 4, 9, 11 and 12, through whom Exs.P.1, 13, 10 and 11 have been marked.

21. On going through the evidence of P.Ws.1 and 2, we are not able to find any ground to hold that their testimony would suffer from any infirmity. On the other hand, their evidence is cogent and creditworthy and their oral testimony has been amply corroborated in Medical evidence adduced by P.W.11 Doctor, who attended to P.W.1 and, the evidence by P.W.8, the Doctor, who conducted post mortem on the body of the deceased. P.W.11 Doctor has also given a wound certificate Ex.P.14 in respect of the injuries found on P.W.1. In both the certificates Exs.P.13 and P.14, it has been specifically mentioned that P.W.1 and the deceased were brought to the hospital by one Maheswari, P.W.4.

22. It was contended on the strength of the evidence of D.W.1 Doctor and Ex.D.1 that P.W.1 would not have been conscious to give the complaint Ex.P.1 to P.W.9 as he sustained very serious injuries on his chest. It is pointed out by the learned counsel for the appellants that D.W.1 would specifically state that operation was conducted at 1.30 a.m. on 26/27.04.1996 and as such, it could not have been possible for him to give a complaint to P.W.9.

23. This contention, in our view, is not tenable for the reason that P.W.11, the Doctor himself would state that P.W.1 told him that he was attacked by known persons with weapons near Ramadoss Chettiar's shop. A reading of the evidence of P.W.11 would make it clear that P.W.1 was conscious throughout. The Doctor D.W.1, who stated that he conducted operation at 1.30 a.m., did not state that he was unconscious thereafter. As a matter of fact, there was no cross examination with reference to the evidence of D.W.1, who stated in his chief examination that he admitted P.W.1 in the Government Rajaji Hospital. Similarly, no challenge was made in the cross examination of P.W.9 Head Constable with reference to the complaint received by him at 4.00 a. m.

24. On the other hand, it has been suggested to PW.9 that he obtained thumb impression from P.W.1 at the relevant time in blank paper and the same has been filled up subsequently. Therefore, there is no reason in submitting that the complaint would not have been given by P.W.1 to P.W.9, especially when Ex.P.1 complaint, which was registered at 6.00 a.m. has reached the Magisrate at about 1.30 p.m. on 27.04.1996.

25. P.W.2 also must have been present in the place of occurrence since P.W.2 accompanied P.W.1 to Madurai Government Rajaji Hospital as her name is mentioned in Ex.D.1.

26. It is true that the weapon had been recovered only from Selvam, the absconding accused and not from other accused. There is no explanation by the investigating officers as to why they did not take steps to obtain police custody of the other accused, who had surrendered themselves before the Court. Of course, this is a flaw on the part of the investigating officers. But, this flaw may not be a ground to reject the prosecution case, which has been projected through the evidence of P.Ws.1 and 2, particularly when their evidence is trustworthy and the same has been corroborated by the medical testimony tendered by Doctors P.Ws.11 and 8.

27. Further, the details of the injuries on P.W.1 as spoken to by P.W.11, the Doctor, have been corroborated by D.W.1, another Doctor, who conducted operation on him.

28. The last submission made by the learned counsel for the appellants, as indicated above is that A.2 and A.3 cannot be liable to be convicted for the offence under Section 302 r/w 34 I.P.C. in respect of the death of the deceased, as there was no common intention and they have not caused any injury on the deceased and as such, they are liable to be convicted only for the injuries caused to P.W.1 alone.

29. The decisions cited by the learned counsel for the appellants would refer to the concept of the common intention under Section 34 I.P.C. These decisions would lay down the principles relating to the common intention. Those principles are as follows:-

" (i) The essence of Section 34 is simultaneous consensus of the minds of persons participating in the criminal action to bring about a particular result. Such consensus can be developed at the spot and thereby intended by all of them.

(ii) Section 34 is to be read along with the preceding Section 33 which makes it clear that the "act" spoken of in Section 34 includes a series of acts as a single act. It follows that the words "when a criminal act is done by several persons" in Section 34, may be construed to mean "when criminal acts are done by several persons.

(iii) To attract Section 34 I.P.C. two ingredients are indispensable. (1) The criminal act should have been done, not by one person, but more than one person. (2) Doing of every such individual act cumulatively resulting in the commission of criminal offence should have been in furtherance of the common intention of all such persons.

(iv) The accused, who is to be fastened with liability on the strength of Section 34 I.P.C. should have done some act which has a nexus with the offence.

(v) The act need not necessarily be overt, even if it is only a covert act it is enough, provided such a covert act is proved to have been done by the co-accused in furtherance of the common intention.

(vi) It is difficult to conclude that a person, merely because he was present at or near the scene, without doing anything more, without even carrying a weapon and without even marching along with the other assailants, could also be convicted with the aid of Section 34 I.P.C. for the offence committed by the other accused."

30. In this case, when both P.W.1 and the deceased asked P.W.2, their mother to proceed to hospital without caring for the words of the accused, the accused took it as insult to them and so they got enraged and began to attack the deceased. While P.W.1 intervened and questioned, Selvam, the absconding accused also attacked the deceased. Then, P.W.1 again intervened, other accused namely, A.2 and A.3 attacked P.W.1 with knife and Aruval and caused injuries on his chest and forehead.

31. In the light of the above principles and facts of the case, there is no difficulty in holding that all the accused were present with dangerous weapons and when the deceased was attacked by A.1 Jayabal, P.W.1 intervened and at that time, to facilitate the other accused to make further attack on the deceased, A.2 Saravanan and A.3 Sivakumar attacked P.W.1 on his chest, rib and forehead. Thus, the facts narrated above would clearly indicate that there was a common intention and in furtherance of the common intention, all the accused attacked both the deceased and P.W.1 inflicting injuries on the vital parts of the body.

32. Therefore, we are constrained to conclude that all the three accused along with Selvam, the absconding accused, in furtherance of the common intention, attacked both the deceased and P.W.1 and hence, A.1 is liable to be convicted for the offences punishable under Sections 302 and 307 r/w 34 I.P.C. and A2 and A.3 are liable to be convicted for the offences punishable under Sections 302 r/w 34 and 307 I.P.C.

33. Thus, this appeal has no merits and is liable to be dismissed. Accordingly, the criminal appeal is dismissed confirming the conviction and sentence imposed on the appellants by the lower Court.

Index:Yes

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To
1. The Principal Sessions Judge,
Virudhunagar at Srivilliputhur.

2. The Superintendent, Central Prison,
Madurai.

3. The Public Prosecutor, High Court,

Madras.

4. The Inspector of Police,
Virudhunagar Town Police Station,
Virudhunagar.

5. The Collector of Tamil Nadu.

6. The Director General of Police, Chennai.